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7 **UNITED STATES DISTRICT COURT**
DISTRICT OF NEVADA

8 UNITED STATES OF AMERICA,

9 Plaintiff,

10 v.

11 FRANCISCO JAVIER FRANCO,

12 Defendant.

13) 2:09-CR-508-KJD (LRL)
14 _____
15 **UNITED STATES' UNOPPOSED MOTION TO**
CONTINUE THE DATE TO RESPOND TO LOWELL
WAYNE TOLIVER'S MOTION FOR RETURN OF PROPERTY
(Third Request)

16 The United States of America ("United States"), by and through Daniel G. Bogden, United
17 States Attorney for the District of Nevada and Michael A. Humphreys, Assistant United States
18 Attorney, respectfully moves this Court to grant an extension of time, until and including April 19,
19 2012, for the United States to file its response to Lowell Wayne Toliver's Motion To Return
20 Property.

21 The Government's Opposition is currently due on March 28, 2012. Lowell Wayne Toliver,
22 proceeding *pro se*, consents to this motion. In this case, the defendant, Francisco Franco, was
23 indicted on December 16, 2009, for, amongst other things, being a felon in possession of a firearm.
24 On September 16, 2010, defendant Franco pled guilty to brandishing a firearm during a crime of
25 violence. As a condition of that plea agreement, the defendant consented to the criminal forfeiture
26 of the firearm, to wit: a .357 magnum revolver, seized from him coincident to his arrest. The United
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1 States learned through its own investigation that Lowell Wayne Toliver was the true owner of that
2 Smith & Wesson .357 revolver. The United States Attorney for the District of Nevada formally
3 notified Mr. Toliver about the gun and consistent with that notification, Mr. Toliver filed his Motion
4 for Return of Property on January 12, 2012.

5 Pursuant to that filing, this Court ordered the United States to file its opposition to Mr.
6 Toliver's motion by March 28, 2012. The parties are in the final stages of negotiating a settlement
7 of this matter, and once executed and presented to this Court for ratification, the litigation will be
8 complete, vitiating the need for the Government to file a response to Mr. Toliver's motion. This
9 matter should be settled by April 19, 2012.

10 As noted above, Government counsel discussed the matter of a government continuance with
11 Lowell Wayne Toliver on March 28, 2012, and Mr. Toliver gave Government counsel authorization
12 to represent to this Court that he, (Mr. Toliver) consents to this motion.

13 This motion is not submitted solely for the purpose to delay or for any other improper
14 purpose.

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1 WHEREFORE, , the United States moves this Court to grant its motion to extend the time
2 for the United States to file its Response To Lowell Wayne Toliver's Motion For Return of Property
3 for an additional 21 days, or until April 19, 2012.

4 DATED this 28th day of March, 2012.

5 Respectfully submitted,

6 DANIEL G. BOGDEN

7 United States Attorney

9 /s/Michael A. Humphreys
10 MICHAEL A. HUMPHREYS

13 IT IS SO ORDERED:



16 DATED: 3 / 29 / 12